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10/589,154	05/04/2007	Olivier Chevalier	VANM199.010APC	6783
20995 7590 11/17/2010 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER MUKHOPADHYAY, BHASKAR				
ART UNIT		PAPER NUMBER		
1789				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/589,154

Applicant(s)

CHEVALIER ET AL.

Examiner

BHASKAR MUKHOPADHYAY

Art Unit

1789

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5.7-15.18-22.25-27 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5.7-15.18-22.25-27 and 29-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1,7-13, 15, 18-22, 25- 27, 29 -38 are rejected under 35 U.S.C. 103 (a) as being unpatentable over NPL " Apricot Glaze" in view of Wiggett et al.(GB 2078082).

5. Regarding claims 1, 7- 13, 15, 18-22, 25, 26, 27, and 29 -38, "Apricot Glaze" teaches about apricot glaze as a thin liquid (line 1, e.g. 'Liquid') pastry glaze (e.g. in line 6, " To prevent soggy pastry crust" and line 9, " glaze for fruit tarts") brushed on food products (Line 2, e.g. 'brushed') like pastry and fruit tarts (line 6, "pastry" and line 9, 'fruit tart').

"Apricot Glaze" also teaches about the liquid status of the glaze (line 1, e.g. 'Liquid') and application of glaze at slightly warm condition which is obvious 35 degree C (Paragraph 3, line 6). Therefore, it meets the amended claimed limitation of "liquid at ambient temperature below 35 degree C without gelling".

It is obvious that brush-on application and below 35 degree C meet the claimed element "ready-to-use" and "cold gelling" as presently claimed invention. It is also obvious that application of glaze at slightly warm temperature (paragraph 3, line 6) which would clearly fall within the claimed ambient temperature of 35 C or below.

"Apricot Glaze" does not teach about glaze composition obtained by solubilizing calcium (II), reactive low methoxylated –amidated pectin, and "naturally present calcium".

.Wiggett et al. teach about a fruit composition comprising 10-50% fruit (abstract), soluble calcium chloride to promote gelation (p2, lines 56-60), and gelling agent that is low methoxy-amidated pectin with degree of esterification of 25-40% and degree of amidation of 15-30% (claim 11).

Wiggett et al. also teach about the glaze composition further comprising another gelling agent from the group locust bean, xanthan, or guar gum (p2, lines 45-48, e.g. 'xanthan gum', 'guar gum'). Wiggett et al. also teach about the pH of the composition is between 3.0 to 4.2 (p1, line 64, e.g. 'pH 3.0 to 4.2').

Wiggett also discloses the available calcium ion can be inherently available from type of fruit which contain high natural calcium, and amount of fruit (p1, col 2, lines 70-90, in line 72, e.g. 'determined on a trial and experiment basis' and in line 88, 'high natural calcium content') which will contribute the amount of calcium ion in the spreadable food composition as "naturally present calcium .

Regarding claims 1 and 32, Wiggett et al. teach about soluble calcium chloride (p2, lines 56-60, e.g. "calcium chloride) between 20-50 mg of Ca / gm pectin (p1, line 49, 0.5 to 1.0 % pectin and p3 line 14, , e.g. ' .8% low methoxyl pectin and p3, line 11, 20-50 mg Ca/g pectin). It is obvious that it meets the claimed ranges of up to about 50 ppm and about 15 ppm to promote gelation. Wiggett et al. also teach about soluble solids content of 40-50% (claim 4) and pH range of the composition is 3.0 to 4.2 (p1, under 'specification', line 64, e.g. pH 3.0-4.2). It is obvious that soluble solids content of 40-50% represents the Brix value in the range of 50 degree -60 degree to meet claimed limitations of brix of about 30 degree to about 60 degree and pH is acidic" in claim 1.

Regarding claim 10, Wiggett et al. disclose the use of 15 % amidated pectin (claim 11), while the present claim 10 requires about 14% pectin.

It is apparent, however, that the instantly claimed amount of about 14% and that taught by Wiggett are so close to each other that the fact pattern is similar to the one in In re Woodruff , 919 F.2d 1575, USPQ2d 1934 (Fed. Cir. 1990) or Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed.Cir. 1985) where despite a "slight" difference in the ranges the court held that such a difference did not "render the claims patentable" or, alternatively, that "a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough so that one skilled in the art would have expected them to have the same properties".

In light of the case law cited above and given that there is only a "slight" difference between the amount of 15% disclosed by Wiggett and the amount disclosed in the present claims, it therefore would have been obvious to one of ordinary skill in the art that the amount of about 14% disclosed in the present claim 10 is but an obvious variant of the amounts disclosed in Wiggett, and thereby one of ordinary skill in the art would have arrived at the claimed invention.

Regarding claims 15, 26, "Apricot Glaze" teaches about a protective coating which "Glaze" (line 5). It is obvious that the brushing the glaze makes a protective coating due to formation of gel.

"Apricot Glaze" does not teach about the formation of gel.

Wiggett et al. teach about the spreadable fruit composition and gum as the thickener (p2, lines 45-62, e.g. in line 43, 'gelling agent" and in line 59, e.g. "spreadable fruit composition'). It is obvious that the glaze is easily cut-able due to formation of a thickness due to gelling agent and thus no flowing down problems will arise which meet claims 15 and 26. The motivation is to control the acidity and degree of gelation in relation to the spreadable fruit composition with the addition of soluble calcium salt to promote gelation (page 2, col 1, lines 55-59) and also to obtain good gel and good resistance to syneresis (p2, col 2, lines 103-105, e.g. ' resistance to syneresis').

Given that "Apricot Glaze" in view of Wiggett disclose glaze as presently claimed, it is clear that the glaze would intrinsically jellify in times as presently claimed.

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Wiggett into "Apricot Glaze". One of ordinary skill in the art would have been motivated to use low methoxylated-amidated pectin which has the property of more calcium reactivity to obtain good gel and to control the acidity and degree of gelation in relation to the spreadable fruit composition with the addition of soluble calcium salt to promote gelation (page 2, col 1, lines 55-59) and also to obtain good gel and good resistance to syneresis (p2, col 2, lines 103-105, e.g. ' resistance to syneresis').

6. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over " Apricot Glaze" in view of Wiggett et al. as applied to claim 1, and further in view of Holscher et al., USPN 4,762,721.

7. Regarding claim 5, "Apricot Glaze" in view of Wiggett et al. does not teach about thixotropic property.

Holscher et al. teach about thixotropic property of a glazing composition with the addition of xanthan gum (col 1, lines 55-67, e.g. 'thixotropic property').

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Holscher et al. into Apricot Glaze in view of Wiggett et al. One of ordinary skill in the art would have been motivated to use xanthan gum as gelling agent which will function as thixotropic agent and will prevent the glaze from dripping off when used on curved surface (Col 1, lines 65-68, e.g. ' thixotropic properties').

8. Claims 1, 7-13,15, 18-22, 25- 27, and 29 -38 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Feller, USPN 5976586, and in view of Wiggett et al.(GB 2078082).

9. Regarding claims 1, 7- 13, 15, 18-22, 25, 26, 27, and 29 -38, Feller teaches about glazed composition of baked goods (col 2, lines 11, 29, 39, e.g. 'glaze' and 46, e.g. 'baked goods) wherein the glaze comprises methoxylated pectin, gum and other

ingredients (col 3, lines 57-67). Feller et al also teach that the food glaze composition is made from a variety of fruit tissues, seeds etc. which contain natural gums (col 3, lines 40-45), which include low or high methoxy pectins (col 3, line 65) and that the glaze is used on food items such as bakery products , e.g. Danish pastries, puff pastry etc. ready-to-use, condensed or dry formulations by spray-on or brush- on applications (col 1, lines 54-67; Col 6, Example 1, lines 40-45). It is obvious that ready-to-use condensed brush –on application prior to or after baking, as well as to baked product prior to freezing (col 1, lines 63-67) meets the claimed element liquid, semi-liquid application at below 35 degree C. It is also obvious that 35 degree C or below meet the claimed limitation of "cold gelling" as presently claimed.

Feller also teaches about a coating which "Glaze" (Abstract; claims 8, 9) .

Feller also teaches about the glaze composition further comprising another gelling agent from the group locust bean, xanthan, or guar gum (Col 3, lines 57-67, e.g. 'xanthan gum', 'guar gum'). Feller also teaches about the pH of the composition is less than 4.5 (Col 4, line 65).

Feller, however, does not teach about glaze composition obtained by (a) solubilizing calcium (II), reactive low methoxylated –amidated pectin (b) Brix and (c) "naturally present Calcium.

With respect to (a), Wiggett et al. teach about a fruit composition comprising 10-50% fruit (abstract), soluble calcium chloride to promote gelation (p2, lines 56-60), and gelling agent that is low methoxy-amidated pectin with degree of esterification of 25-40% and degree of amidation of 15-30% (claim 11).

With respect to (b), Wiggett et al. also teach about soluble solids content of 40-50% (claim 4).

It is obvious that soluble solids content of 40-50% represents the Brix value in the range of 50 degree -60 degree.

With respect to (c), Wiggett discloses the available calcium ion can be inherently available from type of fruit which contain high natural calcium, and amount of fruit (p1, col 2, lines 70-90, in line 72, e.g. 'determined on a trial and experiment basis' and in line 88, 'high natural calcium content') which will contribute the amount of calcium ion in the spreadable food composition as "naturally present calcium .

Wiggett et al. teach about soluble calcium chloride (p2, lines 56-60, e.g. "calcium chloride) between 20-50 mg of Ca / gm pectin (p1, line 49, 0.5 to 1.0 % pectin and p3 line 14, , e.g. ' 0 .8% low methoxyl pectin and p3, line 11, 20-50 mg Ca/g pectin). It is obvious that it meets the claimed ranges of up to about 50 ppm and about 15 ppm to promote gelation

Regarding claim 10, Wiggett et al. disclose the use of 15 % amidated pectin (claim 11), while the present claim 10 requires about 14% pectin.

It is apparent, however, that the instantly claimed amount of about 14% and that taught by Wiggett are so close to each other that the fact pattern is similar to the one in In re Woodruff , 919 F.2d 1575, USPQ2d 1934 (Fed. Cir. 1990) or Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed.Cir. 1985) where despite a "slight" difference in the ranges the court held that such a difference did not "render the claims patentable" or, alternatively, that "a prima facie case of obviousness

exists where the claimed ranges and prior art ranges do not overlap but are close enough so that one skilled in the art would have expected them to have the same properties".

In light of the case law cited above and given that there is only a "slight" difference between the amount of 15% disclosed by Wiggett and the amount disclosed in the present claims, it therefore would have been obvious to one of ordinary skill in the art that the amount of about 14% disclosed in the present claim 10 is but an obvious variant of the amounts disclosed in Wiggett, and thereby one of ordinary skill in the art would have arrived at the claimed invention.

Wiggett et al. teach about the spreadable fruit composition and gum as the thickener (p2, lines 45-62, e.g. in line 43, 'gelling agent" and in line 59, e.g. "spreadable fruit composition'). Wiggett et al. also teach about soluble solids content of 40-50% (claim 4) . It is obvious that soluble solids content of 40-50% represents the Brix value in the range of 50 degree -60 degree. It is also obvious that the glaze is easily cut-able due to formation of a thickness due to gelling agent and thus no flowing down problems will arise which meet claims 15 and 26. The motivation is to control the acidity and degree of gelation in relation to the spreadable fruit composition with the addition of calcium ions from 'natural sources' to promote gelation (page 2, col 1, lines 55-59) and also to obtain good gel and good resistance to syneresis (p2, col 2, lines 103-105, e.g. ' resistance to syneresis').

Given that "Apricot Glaze" in view of Wiggett disclose glaze as presently claimed, it is clear that the glaze would intrinsically jellyify in times as presently claimed.

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Wiggett, into Feller. One of ordinary skill in the art would have been motivated to add calcium ions from 'natural sources' into low methoxylated pectin to promote gelation (page 2, col 1, lines 55-59) and also to obtain good gel and good resistance to syneresis (p2, col 2, lines 103-105, e.g. 'resistance to syneresis')

10. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Feller, USPN 5976586 in view of Wiggett et al. as applied to claim 1, and further in view of Holscher et al., USPN 4,762,721.

11. Regarding claim 5, Feller, USPN 5976586 in view of Wiggett et al. do not teach about thixotropic property.

Holscher et al. teach about thixotropic property of a glazing composition with the addition of xanthan gum (col 1, lines 55-67, e.g. 'thixotropic property').

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Holscher et al. into Feller in view of Wiggett et al. One of ordinary skill in the art would have been motivated to use xanthan gum as gelling agent which will function as thixotropic agent and will prevent the glaze from dripping off when used on curved surface (Col 1, lines 65-68, e.g. ' thixotropic properties').

12. Claim 14 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Feller, USPN 5976586 in view of Wiggett et al. (GB 2078082) as applied to claim 1, and further in view of Smadar et al., USPN 3650766.

13. Regarding claim 14, Feller, USPN 5976586, in view of NPL "Apricot Glaze", and in view of Wiggett et al. do not teach about the firmness of the gelling glaze.

Smadar teaches about the 'firmness of the gelling glaze' with the use of calcium chloride in the composition having methoxy pectin to form a gel like skin coating skin around the extruded product (col 2, line 73, e.g. ' methoxy pectin, col 3, lines 11-12, e.g. ' the strength of the skin can be controlled by varying the concentration of alkaline earth salts' and line 23, ' alkaline earth metal ions' preferably calcium ions') which causes an impervious gel skin structure to immediately form on outer surfaces of the shaped foods (col 3, lines 50-55, e.g. ' 'contacted with a source of alkaline earth ions'). Thus it is obvious that the extra calcium source may be considered prior to application and appropriate for jellification after application.

Smadar also teaches that by controlling the ion concentration and/or exposure time, varying skin strength can be achieved (Col 3 lines 10-20, e.g. 'The strength of the skin can also be controlled by varying ion concentration, time of exposure etc.). It is thus obvious that the firmness of the skin in the form of gelling glaze may be achieved by multiplication of factor 2 by varying calcium ion concentration, exposure time etc. Therefore, it would have been obvious to one of ordinary skill to choose amounts of calcium ions, including that presently claimed, such that there is no jellification before

application to food but the glaze does jellyfy when applied onto food product that provides the desired strength. The motivation is the shapes retaining outer structure or skin on the food stuffs provide heat irreversibility, and relatively impervious gel-like structure (col 2, lines 61-66).

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Smadar, Wiggett, into Feller. One of ordinary skill in the art would have been motivated to make firm gelling glaze in order to retain the shape of the outer structure or skin on the food stuffs provide heat irreversibility, and relatively impervious gel-like structure (col 2, lines 61-66).

14. Claim 14 is rejected under 35 U.S.C. 103 (a) as being unpatentable over NPL "Apricot Glaze", in view of Wiggett et al.(GB 2078082) as applied to claim 1, and further in view of Smadar et al., USPN 3650766.

15. Regarding claim 14, NPL "Apricot Glaze", and in view of Wiggett et al. do not teach about the firmness of the gelling glaze.

Smadar teaches about the 'firmness of the gelling glaze' with the use of calcium chloride in the composition having methoxy pectin to form a gel like skin coating skin around the extruded product (col 2, line 73, e.g. ' methoxy pectin, col 3, lines 11-12, e.g. ' the strength of the skin can be controlled by varying the concentration of alkaline earth salts' and line 23, ' alkaline earth metal ions' preferably calcium ions') which causes an impervious gel skin structure to immediately form on outer surfaces of the

shaped foods (col 3, lines 50-55, e.g. 'contacted with a source of alkaline earth ions'). Thus it is obvious that the extra calcium source may be considered prior to application and appropriate for jellification after application.

Smadar also teaches that by controlling the ion concentration and/or exposure time, varying skin strength can be achieved (Col 3 lines 10-20, e.g. 'The strength of the skin can also be controlled by varying ion concentration, time of exposure etc.). It is thus obvious that the firmness of the skin in the form of gelling glaze may be achieved by multiplication of factor 2 by varying calcium ion concentration, exposure time etc. Therefore, it would have been obvious to one of ordinary skill to choose amounts of calcium ions, including that presently claimed, such that there is no jellification before application to food but the glaze does jelly when applied onto food product that provides the desired strength. The motivation is the shape retaining outer structure or skin on the food stuffs provides heat irreversibility, and relatively impervious gel-like structure (col 2, lines 61-66).

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Smadar, Wiggett, into "Apricot Glaze". One of ordinary skill in the art would have been motivated to make firm gelling glaze in order to retain the shape of the outer structure or skin on the food stuffs provide heat irreversibility, and relatively impervious gel-like structure (col 2, lines 61-66).

Response to Argument

16. Applicant's arguments and amendments on 9/21/2010, have been considered . NPL "Apricot Glaze" in view of Wiggett et al. (GB 2078082) and Feller in view of Wiggett et al. (GB 2078082) have been used to reject amended claim 1 and other dependent claims in this office action as set forth above.

17. Applicants argue on page 9, lines 22- 25, that "Wiggett et al. do not teach formation of a pastry glaze, but instead teaches spreadable fruit compositions (such as marmalade or jam, coulis or fruit puree) (see examples)".

However, note that while Wiggett et al., do not disclose all the features of the present claimed invention, Wiggett et al. is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely the fruit composition and the ingredient responsible to promote gelation, and in combination with the primary reference, discloses the presently claimed invention.

18. Applicants argue on page 9, last paragraph, that "As acknowledged by the Examiner in the Office Action at page 6, last paragraph, neither "Apricot Glaze" nor Wiggett et al. teach that jellification of a glaze composition that provides the extra amounts of naturally present Ca 2+ ions needed for jellification.

It is agreed that "Apricot Glaze" does not disclose level of free natural Ca^{2+} as presently claimed, which is why it is used in combination with Wiggett et al.

Wiggett discloses the available calcium ion can be inherently available from type of fruit which contain high natural calcium, and amount of fruit (p1, col 2, lines 70-90, in line 72, e.g. 'determined on a trial and experiment basis' and in line 88, 'high natural calcium content') which will contribute the amount of calcium ion in the spreadable food composition as "naturally present calcium .

19. Applicants argue on page 10, 3rd paragraph that " This glaze is not a ready-to-use glaze, as it requires pre-heating before application to the food product". It is however, to be noted that there no preheating step is taken in NPL "Apricot Glaze" is above natural condition of making the product before.

20. Applicants argue on page 8, last paragraph and page 10, 3rd paragraph that Apricot glaze and Wiggett et al. fail to teach a ready-to-use cold gelling glaze composition which before application, is liquid or semi liquid at ambient temperatures below 35 degree C". It is, however, to be noted that "Apricot Glaze" teaches about its liquid status (line 1, e.g. 'Liquid') and application of glaze at slightly warm condition which is obvious 35 degree C (Paragraph 3, line 6). Therefore, it meets the amended claimed limitation of "liquid at ambient temperature below 35 degree C without gelling".

21. Applicants argument related to Holscher et al., on page 10, 4th paragraph that Holscher et al. does not remedy the deficiency of Apricot Glaze and Wiggett et al., is, in fact , not true because Holscher et al., as a teaching reference is used to address the claimed limitation of "thixotropic property" of a glazing composition with the addition of xanthan gum(Holscher et al., col 1, lines 55-67, e.g. 'thixotropic property') to remedy the deficiency of Apricot Glaze and Wiggett et al., who do not disclose this particular claimed limitation.

However, note that while Holscher et al. do not disclose all the features of the present claimed invention, Holscher et al. is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely 'thixotropic property', and in combination with the primary reference, discloses the presently claimed invention.

Conclusion

22. Any inquiry concerning the communication or earlier communications from the examiner should be directed to Bhaskar Mukhopadhyay whose telephone number is (571)-270-1139.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)-272- 1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B.M. /
Patent Examiner, Art Unit 1789

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787